

PURPOSE

The purpose of this policy is to assure quality and consistency in recipient rights complaint investigation, reports and remediation across the Michigan Department of Health and Human Services (MDHHS) hospitals and centers.

REVISION HISTORY

The prior version of this policy was published August 11, 2008.

DEFINITIONS**Office of Recipient Rights**

Office of Recipient Rights (ORR) means the office created by the Michigan Mental Health Code which is subordinate only to the director and which is responsible for investigating, resolving and assuring remediation of apparent, suspected, or substantiated rights violations and assuring that mental health services are provided by the department in a manner which respects and promotes the rights of recipients as guaranteed by Chapter 7 and 7A of the Michigan Mental Health Code, PA 258 of 1974 as amended.

Facility

Facility means a MDHHS operated hospital or center.

Investigation

Investigation means a detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

Mediation

Mediation means a private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authoritative, decision making power.

Intervention

Intervention means to act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are undisputable, and the remedy, if applicable, is clear, easily obtainable and does not involve statutorily required disciplinary action.

Preponderance of evidence

Preponderance of evidence means it is more likely that a right was violated than it was not, based upon the greater weight of the evidence not as to quantity (number of witnesses) but as to quality (believability and greater weight of relevant facts provided).

POLICY

It is the policy of the Michigan Department of Health and Human Services that any investigation conducted by the Office of Recipient Rights will be performed in a manner that protects the rights of all parties involved and all reports of investigative findings will meet minimum standards to assure timely and effective remediation of substantiated rights violations.

1. MDHHS-ORR shall ensure that all reports of apparent or suspected rights violations in state operated facilities are resolved in accordance with Section 754 and 778 of the Mental Health Code.
2. Each rights complaint shall be date stamped and logged upon receipt by ORR. Acknowledgment of receipt of the complaint shall be sent, along with a copy of the complaint, to the complainant within 5 business days. ORR shall also inform the complainant at that time if it determines that no ORR investigation of the rights complaint is warranted. ORR shall inform the complainant of the option of mediation if an investigation is conducted.
3. If a complaint does not warrant investigation, however involves a rights issue, ORR may conduct an intervention in response to the complaint. ORR shall inform the complainant of the intervention in the acknowledgment letter. Interventions shall be completed no later than 30 calendar days following receipt of the complaint with written notice of the results of the intervention provided to the complainant. Notice shall include information that, if he/she is dissatisfied with the results of the intervention, the complainant may request an investigation within 10 business days of receipt of the intervention response.
4. ORR shall assist the complainant with the complaint process, advice of advocacy organizations available to assist in the preparation of a written rights complaint and refer the complainant to those organizations. In the absence of

assistance from an advocacy organization, ORR shall assist in preparing a written complaint.

5. ORR shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation. Subject to delays involving pending action by external agencies as described in subsection 14.a. below, the office shall complete the investigation not later than 90 calendar days after it receives the rights complaint. The investigation shall be conducted in compliance with Section 778 of the Mental Health Code.
6. Upon a determination by ORR that an investigation into a recipient rights complaint is warranted, ORR shall notify the facility of the initiation of the investigation.
7. The facility shall allow the ORR access to premises, staff, recipients and records as necessary in order to conduct a thorough and effective investigation.
 - In cases where, in the reasonable judgment of the responsible ORR, the integrity of the record may be at risk, ORR should immediately assure that the record is secured and review pertinent documentation contained therein as soon as practicable.
 - Upon request of ORR, the facility shall prepare and provide a copy of documentation requested, or at the discretion of the ORR investigator, allow the investigator to make necessary copies of relevant documentation.
8. All involved staff shall fully cooperate in a recipient rights investigation. Failure to do so will be reported by ORR to the Human Resources Office for possible disciplinary action.
9. Each investigation by ORR may consist of:
 - An interview with the complainant, when circumstances allow, preferably face-to-face.
 - An interview with recipient(s) if other than complainant, when circumstances allow, preferably face-to-face.

- An interview with all witnesses and others who may provide relevant information, when circumstances allow, preferably face-to-face.
 - An interview(s) with the individual(s) who is (are) alleged to have violated a recipient's right(s), preferably face-to-face.
 - Obtaining written statements from staff, recipients, or relevant others when such a statement is necessary to support oral interviews, to obtain additional information, or to provide findings relevant to the investigation.
 - Review of the case records of recipients involved when pertinent to the complaint.
 - Review of video monitoring when available.
 - Review of investigation into the same allegation conducted by law enforcement or the facility when available.
 - Visit to the site of the alleged violation when appropriate.
 - Review of pertinent statutes, administrative rules, policies and procedures.
10. As the investigation progresses, ORR shall maintain an accurate record of investigation activities.
11. When, in the course of investigation, it becomes apparent that additional right(s) may have been violated, ORR shall initiate a new investigation(s) and/or interventions(s) with a new complaint number(s) for the additional allegation(s).
12. ORR shall issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant and the facility. A status report shall include all of the following:
- Statement of allegations.
 - Citations to relevant provisions of the Mental Health Code, Administrative Rules, policies, and guidelines.
 - Statement of the issues involved.
 - Investigative progress to date.

- Expected date for completion of the investigation.
13. The preponderance of the evidence standard of proof shall be used to determine whether a right was violated.
 14. Upon completion of the process described in subsection 9, ORR shall submit a written report of investigative findings (RIF) to the facility director. Issuance of the RIF may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies. The report shall include all of the following:
 - Statement of allegations.
 - Citations to relevant provisions of the Mental Health Code, administrative rules, policies, and guidelines.
 - Statement of the issues involved.
 - Investigative findings.
 - Conclusions.
 - Recommendations, if any.

In cases involving substantiated abuse, neglect or retaliation/harassment for rights related activity for which disciplinary action is mandated by the Mental Health Code, the following protocol will be followed:

Level I Review

- The facility director may, within 5 business days of receipt of the Report of Investigative Findings (RIF), submit a written Request for Level I Review to the ORR field manager. The written request for review shall include rationale for the request and any supporting documentation.

The following are the only grounds upon which a Request for Level I Review may be made:

- There is a factual dispute.
- There is supplemental information or evidence that is not addressed in the RIF.

- There are deficiencies in the investigative process as established in subsection 9 of this policy.
- The ORR field manager shall, within 5 business days of receipt of the Request for Level I Review, make a determination to either:
 - Uphold the RIF.
 - Return the RIF with direction for further investigation.
- The ORR field manager shall immediately provide written notice of his/her determination to the facility director.

LEVEL II REVIEW

- If the facility director is dissatisfied with the determination made by the ORR field manager, he/she may, within 5 business days of receipt of the written determination by the ORR field manager, submit a written request for level II review to the DHHS-ORR director of operations. The written request for level II review shall include rationale for the request and any supporting documentation. A copy of the written request for level II review and supporting documentation shall be provided to the ORR field manager, the Director of the Bureau of Hospitals and Administrative Operations, the Director of the Office of Human Resources, the facility director and the MDHHS Chief Deputy Director.
- The MDHHS-ORR Director of Operations shall, within 5 business days of receipt of the request for level II review, convene a meeting with the director/designee of the Bureau of Hospitals and Behavioral Health Administrative Operations, the Director/Designee of the Office of Human Resources and other individuals, including the MDHHS Chief Deputy Director/designee, as deemed necessary.
- A determination shall be made at the level II review to either:
 - Uphold the RIF.
 - Return the RIF with direction for further investigation.
- Written notice of the determination shall be submitted immediately to the facility director and ORR field manager.

All participants in the Level I and II Review processes shall act in good faith to expeditiously resolve any disagreements and

assure the timely and effective implementation of disciplinary and/or remedial action on the substantiated violation.

15. Upon submission of the written investigative report to the facility director, ORR shall notify the complainant, in writing, that the investigation has been completed and the investigative report submitted. Information shall also be provided regarding the time frame for complainant's receipt of the summary report from the facility director, the appeal process, and mediation option.
16. A rights investigation may be reopened or reinvestigated by ORR if there is new evidence that was not presented at the time of the original investigation.
17. If it has been determined through the ORR investigation or intervention that a right has been violated, the facility director shall take appropriate remedial action that meets all of the following requirements:
 - Corrects or provides a remedy for the rights violation.
 - Is implemented in a timely manner.
 - Attempts to prevent a recurrence of the rights violation.
 - The action shall be documented by the facility director and submitted in writing to ORR to be made part of the record maintained by the office. ORR shall consider and report the case as open until documentation of the remedial action taken is received.
18. The facility director shall submit a written summary report to the complainant, recipient, if different than the complainant, and guardian or parent of minor recipient within 10 business days after the facility director receives a copy of the ORR RIF. A copy of the summary report shall also be provided to ORR.

The summary report shall include all of the following:

- Statement of allegations.
- Citations to relevant provisions of the Mental Health Code, administrative rules, policies, guidelines, and directives.
- Statement of issues involved.
- Summary of the ORR investigative findings.
- Conclusions of ORR.

- Recommendations made by ORR.
- Specific action taken, or plan of action proposed, by the facility director. (This includes, but is not limited to, the specific level of disciplinary action taken, for example written reprimand, 5 day suspension, etc. for substantiated abuse, neglect or retaliation or harassment of a complainant, recipient, staff of ORR or any staff resulting from rights related activity).
- A statement describing the complainant's right to appeal and the grounds for an appeal.

Information in the summary report shall be provided within the constraints of sections 748 and 750 and shall not violate the rights of any employee.

19. If the summary report indicates a plan of action to be completed on a future date, the facility director shall submit written documentation when the action has been completed. Written documentation shall be submitted to the complainant and recipient if different than the complainant. The guardian, parent of a minor recipient, and the ORR shall also receive the written documentation. Notification shall include a statement describing the complainant's, recipient's (if different), parent's or guardian's right to appeal the adequacy of the corrective action taken to the state appeals committee within 45 days of receipt of the notification.
20. At any time after ORR completes the investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the recipient.
21. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent to ORR.
22. If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and

provide a copy of the documentation to both parties and ORR within 10 calendar days after the end of the mediation process.

23. If the parties engage in mediation, all appeal and response times required under this policy are suspended during the period of time the mediation process is taking place. The suspension of the time periods begins on the day the parties agree to mediate and expires 5 calendar days after the day the mediator provides the written documentation to the parties and ORR that mediation was not successful.
24. Not later than 45 calendar days after receipt of the summary report referred in subsection 18 or notice of a completed corrective action plan referred to in subsection 19, the complainant, recipient if different than complainant, guardian or parent of a minor recipient may file a written appeal with the state appeals committee appointed by the MDHHS director.
25. Not later than 45 calendar days after receiving written notice of the decision of the state appeals committee under subsection 24, the complainant, recipient if different than complainant, guardian or parent of a minor recipient may file a written appeal with the department on the ground that the findings of the ORR are inconsistent with the facts, law, rule, policy, etc.

REFERENCES

Michigan Mental Health Code, MCL330.1772 -MCL 330.1788
Michigan Mental Health Code, MCL 330.1752
Michigan Mental Health Code, MCL 330.1754

CONTACT

For additional information concerning this policy, contact the Director of the Office of Recipient Rights.